Info - Practical Implications of the Lisbon Treaty

Author: BURSON-MARSTELLER

Purpose: Information

Distribution: AEMH Member Delegations

Date: 2 MARCH 2010
Implementing the Lisbon Treaty: how does Europe tie up the loose ends?

February 2010

European Union leaders met on the outskirts of Brussels in 2001 to make a commitment for the EU to become more democratic, transparent and effective. The Nice Treaty had been signed only one year previously, yet with the “Laeken declaration”, the Union was being prepared for a new cycle of institutional reform. That cycle began with the Convention on the Future of Europe, which led to a draft constitutional treaty that was defeated by French and Dutch voters in 2005. After a period of reflection, the next step was an amending treaty, the Lisbon Treaty, which was rejected – and then accepted – by the Irish people, and finally came into force on 1 December 2009.

However, ratification is not the end of the story – and there are several questions left unanswered by the new treaty.

EUROPEAN COMMISSION

ELECTION OF THE COMMISSION PRESIDENT BY THE EUROPEAN PARLIAMENT

The new clause on the “election” of the European Commission president by MEPs merely formalises what parliamentarians believe they have been doing for some time (according to the assembly’s Rules of Procedure) – but does also bring some new dimensions to the designation of the head of the Commission.

Firstly, member states are required to take into account the results of the European Parliament elections: who will achieve an “absolute” majority of half of all MEPs (increased from the previous “simple” majority of MEPs voting)? For instance, it may not necessarily be a representative of the Parliament’s largest single group, but someone who can command a parliamentary majority made up of several smaller groups.

In 2009, José Manuel Barroso was elected under the old Nice rules, but actually achieved the absolute majority that would have been necessary under Lisbon – a politically significant endorsement. (The rest of his College was approved by the Parliament, by an even bigger majority, on 9 February 2010 – see box, right).

The fact that the President of the Commission will be elected by an absolute majority of the Parliament is likely to increase his or her sense of responsibility to MEPs – and we are likely to see the trend of increasing dialogue continue; for example, committee Chairs will now have an annual meeting with the College of Commissioners, and the President of the Commission will hold regular meetings with the Parliament’s Conference of Presidents, which is composed of the Parliament’s president and the leaders of the political groups.

Another change will become evident in 2014: the Party of European Socialists has already decided to put forward a candidate for the presidency of the Commission ahead of the next European Parliament elections. Other parties are likely to do the same. As a result, the Commission could become more visible to the general public and more political – although it is likely that the composition of the Commission will not change significantly, continuing to comprise figures from across the political spectrum.

DELEGATED POWERS

One of the biggest “unknowns” of the period following the entry into force of the Lisbon Treaty is the impact on implementation of EU legislation. “Comitology”, as such, is no more: the implementation of EU laws is now to be carried out through “delegated acts” and ‘implementing acts’.

“Delegated acts”, which correspond roughly to acts currently agreed under the regulatory procedure with scrutiny (RPS), cover quasi-legislative acts of a general scope that amend non-essential elements of legislative acts. An example could be an Annex to a Regulation in which substances are approved or restricted.

These type of acts previously required approval by committees made up of member state experts, and then scrutiny by the Council and Parliament. Now, the Commission has complete control, with no requirement to consult member states (although in practice, it is still likely
to consult member states). Another major change is that the Parliament and the Council will set down the terms of the delegated powers in each Regulation or Directive (there will be no overarching rules on the process, as at present). The Council and Parliament will keep the power to block measures that have been drafted by the Commission; however, they will also have the power to revoke these powers.

The impact of these changes could be that the Parliament becomes less reluctant to delegate to the Commission: firstly, the Commission will be, in theory, less beholden to member states’ views (as it has been in the comitology committees); secondly, it can set the terms of the delegated powers, rather than relying on “one-size-fits-all” procedures under RPS; thirdly, it can revoke the delegation at any time. However, the Parliament will have a lot more work to do in order to scrutinise the measures drafted by the Commission – and is likely to spend a lot more of its time on scrutinising the implementation of EU laws.

Other former comitology acts will be covered by “implementing acts”, which will be governed by horizontal rules agreed jointly by the Council and Parliament (and not just the Council, as was previously the case). Elaboration of these rules is a high priority for the new Commission. Meanwhile, most immediately, the Council is also likely to fight to retain vestiges of its old comitology controls over the Commission, despite the wording of the new treaty.

EUROPEAN COUNCIL

A NEW INSTITUTION

Long part of the EU architecture, the European Council (like the European Central Bank) becomes an official EU institution under the Lisbon Treaty. The new denomination, and the new leadership brought by having a permanent president (see below) is likely to enhance the institution’s role as the motor of the EU process.

PRESIDENCY OF THE EUROPEAN COUNCIL

The designation of a permanent President of the European Council was one of the major innovations of the Lisbon Treaty (taking on the idea from the constitutional treaty). Herman van Rompuy (left), a former Belgian prime minister, is the first person in this role, and has the ability to shape it – initial signs are that he will be not a “president”, in a French or American sense, but more than simply a “chairman”.

There are a number of implications brought about by the new role. There will be increased continuity in the Council’s work and the agenda of meetings, with each presidential term lasting two-and-a-half-years (renewable once). The success of European Council meetings will no longer be so dependent on the personality of the leader of the country holding the rotating Council presidency and the skills of his or her national administration.

European Council meetings will also change: Mr van Rompuy has indicated that foreign ministers will no longer attend, in order to make the meetings more intimate. The choice of the Bibliothèque Solvay in Brussels for the first meeting under the new regime was a further signal of this intention. Furthermore, the Lisbon Treaty states that European Council meetings are to be attended by ‘heads of government or state’; the change from “and” to “or” means that some countries – such as Poland – will have to choose whether the government will be represented by a president or a prime minister.

There are likely to be conflicts with the government holding the rotating Council presidency over external representation, although the new treaty is clear that the President of the European Council will represent the EU externally at his or her level in diplomatic matters. However, the Commission President will exercise this representation in economic matters – and there is a large scope for disagreement when summits with third countries involve cross-cutting issues like trade and development. A “bicephalous” representation will remain, although it will now be made up of two full-time European presidents. In addition, Mr van Rompuy and Mr Barroso will meet weekly to ensure smooth coordination.

EUROPEAN PARLIAMENT

NEW PARLIAMENTARY PROCEDURES AND POWERS

Under the Lisbon Treaty, co-decision becomes the “ordinary legislative procedure”. However, the changes are not merely nominal: the application of this procedure will be extended to the common agricultural policy, breaking the Council’s stranglehold in this area. (Equally significantly, the Parliament will have power over all areas of the EU’s annual budget, including ‘compulsory expenditure’ under the CAP – although the formalisation of the multiannual financial frameworks, still under the Council’s control, does limit the margin for manoeuvre).

The Parliament will also gain “co-decision” powers in around 60 areas, including on aspects of justice and home affairs, energy, standard-setting in public health, personal data protection, border controls, intellectual property rights, sport and tourism. MEPs have already begun to put these new powers into practical effect – for example, by rejecting the SWIFT agreement on the transfer of personal data in bank transfers. As with previous extensions of legislative power, the Parliament is likely to test its new powers to their limits.
In addition, international agreements will now, as a rule, require the consent of the European Parliament. It may take a while for this change to take practical effect, and it may need a “clash” (for example, Parliament blocking a deal with a third country) to stop the Council from continuing with “business as usual”.

In practice, we could also see MEPs, in the long-term, beginning to use their new rights to exert the EU’s soft power – for example, by insisting on social and environmental standards in international agreements.

MORE MEMBERS

The delay of the Lisbon Treaty beyond the European elections of June 2009 presents a thorny issue for the assembly – and for member states. The European Council agreed in December 2008 that the additional seats granted to some member states under Lisbon would be filled according to the results of the European elections – but also left open the possibility for member states to nominate new MEPs from national parliaments.

Germany, which would lose three seats under Lisbon, will keep these members until 2014. This change, which brings the number of MEPs to 754 rather than the Lisbon Treaty’s 750 plus the Parliament’s president, requires the Treaty to be amended at an intergovernmental conference (IGC). With France planning to nominate its two additional members from the National Assembly (a move that has been criticised heavily by many MEPs), the Parliament may decide to invoke its right to insist that a convention is held before the IGC.

A convention – and an IGC – would present significant problems. Firstly, some member states (especially Spain, which stands to gain four MEPs) are becoming irritated at being denied their appropriate influence in the institutional process. Secondly, an IGC and convention would open up the Treaty more widely – a particular threat if a Eurosceptic Conservative government takes power in the UK in 2010 and seeks to re-negotiate other aspects of the text, such as agriculture and fisheries. Finally, there are now 18 “phantom” MEPs who can sit as observers and be paid a salary, without having the right to vote – a situation that is somewhat embarrassing for the Parliament and the EU.

In terms of personnel, the additional MEPs could see Sweden’s Pirate Party double its representation, a fifth MEP for the right-wing Freedom Party from the Netherlands, and the French Greens become the second biggest delegation from that country, overtaking the Socialists.

The process could take around two years to resolve – and may only be achieved via an accession treaty to allow Croatia to enter the EU, in 2011 (thereby avoiding opening up the Lisbon Treaty). However Spain, and the 11 other countries that stand to gain seats, may not wish to wait that long.

COUNCIL OF THE EUROPEAN UNION

QMV

Qualified majority voting will change in both its practice and its scope – and in some ways, becomes simpler. From 1 November 2014, the current system – which gives countries between 29 and three votes, roughly based on its size, will be replaced by a system based on majorities of member states and populations represented.

These two criteria already exist in the current system, although the thresholds will be changed: a winning majority will require at least 55% of member states in favour (rather than the current ‘more than half’), representing at least 65% of the EU population (currently, member states can make a request to check that at least 62% of the EU population is represented by the majority).

However, until 31 March 2017, any member state can request the use of the current QMV system. In addition, a small minority will still be able to slow down a winning majority: in the transitional phase, further talks will be held if the minority represents 75% of the number of states or population normally required for a blocking minority. From 1 April 2017, when the current QMV system is finally done away with, this threshold falls to 55%, making it potentially even easier for a small group of member states to frustrate the majority.

So in practice, there is simplification – but there are difficulties down the line with the “brake” mechanism. If it becomes too widely used, then groups of member states may consider acting alone, using the “enhanced cooperation” procedure. Another practical implication is the use of population figures: which population data will be used? Will residency or citizenship be the criterion (one which could make a big difference to the weight of some member states, such as Italy)? Council presidents will also have to get to grips with some complex calculations.

The other major change is the extension of QMV to forty additional areas, including climate change, energy security and emergency aid. Defence, taxation, social security and foreign affairs remain subject to unanimous votes in the Council.

A summary of the new rules on qualified majority voting is annexed to this Burson-Marsteller Insight.

HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY

The other major post created by the Lisbon Treaty was that of High Representative of the Union for Foreign Affairs and Security Policy. Lady Ashton, who was nominated to the role in November 2009, will chair the meetings of the Foreign Affairs Council (now separated from the General Affairs Council) and also sit as the first vice-president of the European Commission, with responsibility for the external relations
portfolio. The High Representative (right) will represent the EU externally at foreign minister level, reflecting the views of national governments. She will also attend the European Council – unlike the ministers she presides over in the Foreign Affairs Council.

The new role does bring practical difficulties, and issues of perception: for example, is it more appropriate for the High Representative to be based in the Council or Commission buildings, and how will this influence the policies of the office-holder? While the Parliament would like to treat the new role as a Commission position – over which MEPs have greater scrutiny – the Council would see the High Representative as its foreign affairs chief.

There is also the thorny issue of the European External Action Service, which is due to be established by April. Lady Ashton, as head of this body, will have a difficult role in managing the demands of the Council’s external relations department, the Commission’s DG External Relations, and the member states’ diplomatic services, for positions and influence. The Commission’s extra-EU representations will fall under the EEAS banner and are likely to become de facto EU embassies.

A final implication in this first term is for the United Kingdom. While commissioners are nominally “European”, they undoubtedly bring a national perspective that can be valuable on certain sensitive dossiers. With Lady Ashton having an international role, how well will she be able to influence the Commission’s discussions on issues of importance to the UK? Her success or failure in this regard may determine how coveted the role is in 2014.

TRIO PRESIDENCIES

The six-month-long rotating presidencies of the Council will remain for all but the European Council and the Foreign Affairs Council – but there will be greater coordination in the sectoral Councils too. The “troika presidency” system – in use for around five years now – will be formalised; the two member states that are not presiding over meetings will be required to ‘assist the Chair in all its responsibilities on the basis of a common programme’.

Council presidency priorities will become more difficult to influence, as they will be decided every eighteen months, rather than every six, and involve three governments – however, the chances of these priorities being given practical effect are likely to be much greater. The Spanish, Belgian and Hungarian presidencies form the first formal “troika” – and they have worked to develop a common programme and visual identity for their trio presidency.

NATIONAL PARLIAMENTS

NATIONAL SCRUTINY OF COMMISSION PROPOSALS

One of the most talked-about innovations of the Lisbon Treaty is the increased powers of scrutiny given to national parliaments. Legislatures in member states will monitor the Commission’s communications and annual legislative and work programme, as well as legislative proposals, and have an eight-week period to object to proposals on the basis that they violate the principles of subsidiarity and proportionality, with the possibility of forcing the Commission to modify its plans.

In practice, this new provision may not add up to much: Finland has had a similar measure since its accession in 1995, and has never used it. However, it does signal increasing scrutiny of EU measures by national parliaments, and the impact may be an expansion of the Danish system, whereby ministers are placed under greater control before and after they attend Council meetings.

SOME OTHER KEY INNOVATIONS OF THE LISBON TREATY

CITIZENS’ INITIATIVE: with one million signatures, EU citizens can invite the Commission to submit appropriate legislative proposals to implement the treaties. The practical modalities are yet to be defined (including methods of verification) – but the implications could be great. With half a billion citizens in Europe, the threshold is low – and trans-national (and even national) lobby groups will be looking to use their networks of supporters to place their issue on the EU agenda.

EXIT CLAUSE: the irony of sovereigntists’ opposition to the Lisbon Treaty is that the new text makes it easier for countries to quit the EU. Although it is unlikely in the short term that any country will leave, the mechanism is now in place. The trickier part will be to agree the terms of and arrangements for any specific departure.

CHARTER OF FUNDAMENTAL RIGHTS: all EU institutions will be bound by the 54-article-long Charter in their application of EU law, and citizens can seek redress in national and EU courts when they feel EU law (or its implementation) does not comply. In practice, however, the social, employment, political and civil rights are already covered by EU law. The new Charter simply codifies these rights and makes them more prominent. The Czech Republic, Poland and the UK have an opt-out from the Charter.
Qualified majority voting under the Lisbon Treaty

**Qualified majority**
- 75% of states/population needed for blocking minority
- 55% of states/population needed for blocking minority

**QMV until 31.10.2014**
- 255 votes needed
- + 62% of EU population

**QMV from 01.11.2014**
- 55% of member states
- 65% of EU population

**‘Brake mechanism’ under new QMV**
- 34% of states
- 27% of population

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